

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7216 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MANILAL VELAJI LUHAR

Versus

COMMISSIONER OF POLICE

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Appearance:

MR RC KODEKAR for Petitioner

MR SP DAVE AGP for Respondent No. 1, 3

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 25/11/97

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner, who is at present under detention, pursuant to the detention order dated 10.6.1996, passed by the Police Commission of Ahmedabad city invoking the powers under sec. 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985, (hereinafter referred as to the "Act") with a view to deter him from carrying on his anti social activities,



the challenge to the maintenance of the public order, calls in question the legality and validity of the said order.

2. The police in the city of Ahmedabad coming across with several incidents of theft or robbery and decoity, found that no one was coming forward to lodge the complaint with concrete information. The Police Commissioner who was making inquiries after visiting several police stations and inspecting the record, knew that certain complaints were lodged against the petitioner, and detailed inquiry was necessary to solve the problematic developments. He noted that in the Bapunagar police station, three complaints for the offences punishable under section 392 read with section 114 of IPC were lodged. While with the Amraiwadi police station and Sabarmati police station, similar complaints were lodged. The petitioner was habituated in committing such offences and by his nefarious activities, he was striking terror in the society. He was, therefore, required to be chocked, but action under general laws applicable were not found effective, as the same were found skimpy. The police therefore, thought it fit to pass the order of detention and detain the petitioner so as to deter him from carrying out his further anti social activities putting the people in fear, and adversely affecting the maintenance of public order. The order in question is, therefore, passed and the petitioner was then arrested.

3. The petitioner has assailed the order on several grounds, but it is not necessary to deal with all those grounds as the petition is likely to be disposed of on one ground going to the root of the case, and it is unjust exercise of the privilege by not disclosing the particulars about the witnesses. According to the respondent, it was not at all desirable to disclose certain particulars of those witnesses because by doing so the witnesses would have been identified and would have met with dire consequences. The order therefore, passed was quite in consonance with law, and there was nothing which would justify the court to hold it illegal or unconstitutional.

4. It would be better if the law about the non-disclosure of certain facts is elucidated. Reading Article 22 (5) of the Constitution of India, what becomes clear is that the grounds on which order of detention has been made are required to be communicated to the detenu and further an opportunity of making the representation against the order of detention is required to be given.



The detenu is therefore required to be informed not merely factual inference and factual material which led to inference namely not to disclose the certain facts, but also the sources from which the factual material is gathered. The disclosure of sources would enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act the detaining authority is empowered to withhold such facts and particulars the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has been exercised sparingly and in those cases where public interest dictating non-disclosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons, the authority making the order has to make necessary inquiry personally applying mind. What can be deduced from such constitutional as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest even in the case where the task is assigned to some one else. If he mechanically endorses or accepts the recommendation of an outside or inferior authority in that behalf the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the Court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer



against the detaining authority. If the affidavit is filed explaining the exercise of the power the other side may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference of a decision in the case of Bai Amina, w/o. Ibrahim Abdul Rahim Alla v. State of Gujarat and others - 22 G.L.R. 1186 held to be the good law by the Full Bench of this Court in the case of Chandrakant N. Patel v. State of Gujarat & Others - 35 (1) [1994(1)] G.L.R. 761, may be made.

5. What can be deduced from the aforesaid authority making the law clear is that the detaining authority applying mind must be fully satisfied that the apprehension expressed by the witnesses is honest, genuine, reasonable and not imaginary. The authority is under two fold obligations, one is to exercise the discretion and withhold the facts and particulars, the disclosures of which is not in the public interest, and second one is to furnish the detenu with material facts and particulars. The authority has therefore to peruse the materials before him and other evidence and should personally feel satisfies applying the mind that the certain particulars and facts are required to be withheld in the public interest.

6. In this case, the copy of the order produced at Annexure-C, wherein it is mentioned that the police commissioner got the inquiry made through his personnel in the office and then felt satisfied that the fear expressed by the witnesses were real and genuine and, therefore, he exercised the privilege vested in him vide section 9(2) of the Act. He has not personally verified the facts or inquired into the matter and reached the conclusion applying his mind. He has also not filed the affidavit as to how he was then satisfied personally for exercising the privilege and withhold the particulars not supplied to the petitioner. As the particulars were not supplied, the petitioner did not get a reasonable opportunity which he is entitled to in law to study the allegations levelled against him and make effective representation. When his right to make effective representation is thus jeopardized, his continuous detention cannot be held good or legal and valid, and the same is required to be quashed.

7. For the aforesaid reasons, the order of detention being illegal and invalid is, hereby quashed and the petitioner is ordered to be set at liberty forthwith, if no longer required in any other case. Rule made absolute.



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